

INFORMATION TO OBTAIN A PRODUCTION ORDER  
PURSUANT TO SECTION 487.012 OF THE CRIMINAL CODE

THIS IS THE INFORMATION OF:

Allan Mathews, of the City of Ottawa, in the Province of Ontario, a public officer appointed or designated to administer or enforce a federal law and whose duties include the enforcement of the *Canada Elections Act*, taken before me.

THE INFORMANT SAYS THAT he has reasonable grounds to believe and does believe that the following offences have been committed, namely:

OFFENCES

That a person or persons unknown, on May 2, 2011, at or near the City of Guelph and elsewhere in the Province of Ontario, did wilfully prevent or endeavour to prevent an elector from voting in an election contrary to paragraph 281 (g) of the *Canada Elections Act*;

And by so doing committed an offence contrary to paragraph 491 (3) (d) of the *Canada Elections Act*, S.C. 2000, c.9 as amended;

AND

That a person or persons unknown, on May 2, 2011, at or near the City of Guelph and elsewhere in the Province of Ontario, did, by pretence or contrivance, induce or attempt to induce persons to vote or refrain from voting or to vote or refrain from voting for a particular candidate and by so doing committed an offence contrary to paragraph 482 (b) of the *Canada Elections Act*, S.C. 2000, c.9 as amended.

And that the following documents or data will afford evidence respecting the commission of the offences described above:

DOCUMENTS OR DATA TO BE PRODUCED

Copies, certified by affidavit to be true copies of documentation recorded or stored by means of any device; and/or

Documents prepared based on documents or data in existence, as the case might be

located at or through RackNine Inc., #5, 9353 50 Street NW, Edmonton, Alberta, T6B 2L5, however stored (electronically, on microfiche, on paper, on photographic film or any other form), maintained at or by RackNine Inc., relating to:

- Correspondence, notes, e-mails, e-mail attachments, minutes of phone conversations, records of decisions, personal notes or other records of contact between or among representatives of the Conservative Party general election campaign in Guelph, or any individual associated to that campaign and RackNine Inc. or any of RackNine Inc. officers or employees between the period of March 26, 2011 and May 31, 2011, concerning the contracting for, production, uploading, storage, dissemination, billing or payment for voice broadcast material that was transmitted or was to be transmitted to any telephone numbers beginning with the 519 or 226 area codes, or that was otherwise directed to telephone numbers in the Guelph, Ontario area on May 2, 2011;

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- Customer user names, customer passwords and customer IP addresses associated to the Conservative Party candidate general campaign in Guelph, or to any individual associated to that campaign that was used to interact with RackNine Inc. between the period of March 26, 2011 and May 31, 2011, concerning the contracting for, production, uploading, storage, dissemination, billing or payment for voice broadcast material that was transmitted or was to be transmitted to any telephone numbers beginning with the 519 or 226 area codes, or which otherwise were directed to any telephone numbers in the Guelph, Ontario area on May 2, 2011;
- Invoices, contracts, receipts, accounts, accounting records, billing or payment records, payment instructions, including cash disbursements journals; concerning the contracting for, production, uploading, storage, dissemination, and billing and payment for voice broadcast material that was transmitted or was to be transmitted to any telephone numbers beginning with the 519 or 226 area codes, or which otherwise were directed to any telephone numbers in the Guelph, Ontario area on May 2, 2011;
- Scripts or recordings of any audio message intended for transmission or actually transmitted to any telephone number beginning with the 519 or 226 area codes, or which otherwise were directed to telephone numbers in the Guelph, Ontario area on May 2, 2011;
- Time schedules, phone calling lists, details of voice broadcast coverage, including the origin and source of the material to be transmitted, and the date and time of day of voice broadcasts and records, reports and call summaries of calls transmitted or which were to be transmitted to any telephone numbers beginning with the 519 or 226 area codes, or which otherwise were directed to any telephone numbers in the Guelph, Ontario area on May 2, 2011;
- Call Detail Records pertaining to the completion of calls or voice broadcasts transmitted or which were to be transmitted by RackNine Inc. to any telephone numbers beginning with the 519 or 226 area codes, or which otherwise were directed to any telephone numbers in the Guelph, Ontario area on May 2, 2011.
- Records, reports and summaries generated by RackNine Inc. of the use of phone number 450-760-7746 as a "calling number" for any voice broadcast transmitted or which were to be transmitted by RackNine, and the date and time of day and content of any of voice broadcasts transmitted using this telephone number to any telephone numbers beginning with the 519 or 226 area codes, or which otherwise was directed to any telephone numbers in the Guelph, Ontario area on May 2, 2011.
- The identification of the actual calling number for any voice broadcast transmitted or which were to be transmitted by RackNine Inc., and the date and time of day and content of any of voice broadcasts transmitted using this telephone number to any telephone numbers beginning with the 519 or 226 area codes, or which otherwise was directed to any telephone numbers in the Guelph, Ontario area on May 2, 2011

The Informant says that he has reasonable grounds to believe and does believe the matters described above, and that his grounds are set out as follows:

## OVERVIEW

1. I, Allan Mathews, the Informant herein, am an Investigator in the Office of the Commissioner of Canada Elections (the "Commissioner") and a person charged by the Commissioner with duties relating to the administration and enforcement of the *Canada Elections Act* (the *Act*). For the purposes of section 487.012 of the Criminal Code, I am a public officer. I have personal knowledge of the matters and facts contained herein except where stated to be on information or belief and where so stated I verily believe them to be true.
2. I have been investigating complaints that, in relation to the 41<sup>st</sup> general federal election, in the electoral district of Guelph, Ontario, misleading telephone calls appearing to have come from telephone number 450-760-7746, were made to certain electors on Election Day, May 2, 2011.

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Individual electors have described to me receiving telephone calls around 10:00 hours on the morning of May 2, 2011. The caller was usually described as a recorded female voice giving a bilingual message, who claimed to be calling on behalf of Elections Canada. The gist of the message was that due to a projected increase in poll turnout, the elector's voting location had been changed to Old Quebec Street Mall at 55 Wyndham Street North, Guelph. The message was repeated in French. Almost all recipients of the calls who noted their call display function said the calling number given was 450-760-7746. There was no truth to the information conveyed in these calls. The caller was not representing Elections Canada and no voting location had been moved. The electors called could not vote at the location named in the call as they did not live within the geographic catchment area of the polling station to which they were being told to go.

3. I believe that the offences described above have been committed by a person or persons unknown; that the records to be produced will provide further evidence of these offences; and that the records are in the possession or control of RackNine Inc. of Edmonton Alberta. This Information sets out the grounds for my belief in these matters. An element of the proof of the alleged offences requires evidence of telephone calls made to electors, and of the individual(s) responsible for initiating the calls. The documents or data and their relationship to offences under the *Act* are set out in this Information.
4. I therefore believe that by the pretence or contrivance of these misleading calls the conduct induced or attempted to induce electors to vote or not to vote, or to vote or not to vote for a particular candidate, contrary to paragraph 482 (b) of the *Act*. Similarly the conduct wilfully sought to prevent or endeavoured to prevent electors from voting in the election being carried out on May 2, 2011, contrary to paragraph 491 (3)(d) of the *Act*.
5. On June 8, 2011, in furtherance of this investigation, I swore an Information to Obtain a Production Order for Bell Canada records in relation to the 450-760-7746 telephone number, before Justice William Stewart, at Ottawa, Ontario. Justice Stewart issued a Production Order for Bell Canada the same date. The Production Order was served on Bell Canada June 8, 2011, and returns on the Order were made by Bell Canada on June 29, 2011 and on July 21, 2011. I attach as Exhibit "A" a copy of my Information to Obtain a Production Order of June 8, 2011 for Bell Canada records.
6. On September 7, 2011, in furtherance of this investigation, I swore an Information to Obtain a Production Order for Distributel Communications Limited records in relation to 2 telephone numbers, 866-467-2259 and 877-841-3511, which were called by the 450-760-7746 telephone number on April 30 and May 1, 2011, before Justice Paulina Brecher, at Ottawa, Ontario. Justice Brecher issued a Production Order for Distributel Communications (Distributel) as the parent company to ThinkTel Communications, the same date. The Production Order was served on Distributel September 7, 2011. Returns on the Order were made by Distributel on September 14 and on September 27, 2011. I attach as Exhibit "B" a copy of my Information to Obtain a Production Order of September 7, 2011 for Distributel records.
7. Where I refer to Distributel in this present Information to Obtain I am referring to Distributel as the parent company to ThinkTel Communications (ThinkTel) and producing documents or data of ThinkTel records in Distributel's capacity as the parent company and controller of the records.
8. With one (1) exception I incorporate the contents of both ITOs herein, including the background information, the description of the offences and my Grounds for Belief of those respective dates. That exception is that, on reviewing the ITO of September 7, 2011, I find that I inadvertently identified the telephone number 450-760-7746 on a number of occasions as 450-760-7446. This was an error and on each occasion I intended to identify the number as 450-760-7746.
9. I am swearing this present Information in support of a request for a Production Order to obtain DOCUMENTS OR DATA TO BE PRODUCED pertaining to records I believe to be retained by RackNine Inc., for the period March 26, 2011 to May 31, 2011. RackNine Inc. is a corporation whose head office is located at Edmonton, Alberta. I believe the information will assist in determining who made the calls to Guelph electors, and how phone number 450-760-7746 appeared as the calling number in relation to the calls made to electors in Guelph.
10. RackNine Inc., the person to whom this production order is addressed is not a person who has committed or is suspected of having committed the offences set out under the heading OFFENCES

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above, or any other offences against any act of parliament. This person is not subject of this investigation and is reasonably believed to have possession or control of the material named in the DOCUMENTS OR DATA TO BE PRODUCED.

11. This present Information explains my analysis of information obtained from the 2 previous Production Orders, as well as technical information learned from an individual expert witness.

## GROUND FOR BELIEF

### **Summary of Grounds for Belief to September 7, 2011**

12. I herein incorporate my Grounds for Belief as set out in copies of the ITOs of June 8, 2011 and September 7, 2011, with the single correction noted above at paragraph 8.
13. In particular, the ITO of June 8, 2011 sets out my grounds for belief that misleading calls were made to a number of electors in the city of Guelph falsely claiming to be from Elections Canada and falsely claiming the electors' polling stations had been moved to the Old Quebec Street Mall polling location. Further, the ITO of June 8 also sets out my grounds for belief that electors who went to the Old Quebec Street Mall polling location on the basis of the misleading call would not have been able to vote there, and that Elections Canada poll staff at the Old Quebec Street Mall reported that a significant number of electors did attend there as a result of receiving the misleading calls. Finally, the ITO of June 8 also set out my grounds for belief that electors receiving the call believed it to come from phone number 450-766-4776, based on their telephone call displays. These circumstances amounted to my reasonable grounds to believe that the offences described above in this present Information to Obtain occurred.
14. Further, the ITO of September 7, 2011 set out my grounds for belief that the misleading calls that were made to electors appeared to have come from phone number 450-760-7746, but did not. The ITO of September 7 identified that Bell Canada provided me with Call Detail Records (CDRs) in response to the Production Order of June 8, 2011. A CDR is a table for a specific phone number which shows in date order the phone numbers calling, and the phone numbers called by, the specific phone number. The CDR also provided other information, including the time, and length of each call to or from the specific phone. The Bell Canada CDR showed that phone number 450-760-7746 had only been activated on April 30, 2011 and had only ever called 2 phone numbers (other than its own voicemail), both being toll free numbers -- 866-467-2259 which was called 3 times on April 30 and 877-841-3511 which was called 7 times in the late evening of May 1, 2011. Additional information from Bell stated that their records identified the phone 450-760-7746 subscriber as Pierre Poutine of Separatist Street, Joliette, Quebec.
15. The ITO of September 7, 2011 set out further grounds for my belief relating to the 2 phone numbers called by 450-760-7746 on April 30 and May 1, namely numbers 866-467-2259 and 877-841-3511. The ITO of September 7 identified that I had called 866-467-2259, on August 23 and several times since. On each occasion I got a recorded voice welcoming me to RackNine and offering a variety of services, including web hosting, a VoIP digital phone service and a Do Not Call List (DNCL). I also called 877-841-3511 at the same time. This number was answered with a recorded greeting asking me to log in with my customer number. I subsequently conducted internet searches of RackNine Inc. and obtained a further description of the services available through RackNine Inc. to the effect that RackNine Inc. is in the business, amongst other things, of Voice over internet Protocol (VoIP) calling. The ITO set out my grounds for believing, based on information of Simon Rowland, a subject matter expert and himself in the business of telephone call center calling, that VoIP calling is a means of sending multiple recorded calls to telephone recipients. The ITO also set out further grounds for belief that a company such as RackNine is known as a Voice Broadcasting Vendor (VBV) or a Voice Broadcasting Services provider.

### **New Grounds for Belief -- Part 1**

### **Distributel Subscriber Information**

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16. Amber Hancock, Privacy Officer at Distributel, provided a return on the Production Order of September 7, 2011 by an email of September 14, 2011. She confirmed that ThinkTel Communications, a subsidiary of Distributel, was the service provider for the RackNine Inc. numbers 866-467-2259 and 877-841-3511 between March 26 and May 5, 2011.
17. As noted at paragraph 44 of my ITO of September 7, 2011, ThinkTel Communications Inc. is a subsidiary of Distributel Communications. ThinkTel Communications is located at 10235 124 St. NW, Edmonton.
18. Amber Hancock identified that the toll free numbers 866-467-2259 and 877-841-3511, were ThinkTel numbers in use by RackNine Inc. The numbers were subscribed to by Swiftvox, a customer since May 8, 2009 for the 877-841-3511 number and since September 9, 2009 for the 866-467-2259 number. The contact name given for Swiftvox was Michael Tomlinson, 2625 des entreprises, Terrebonne, Quebec. I do not presently know the relationship between Swiftvox and RackNine Inc.

#### **The Distributel Call Detail Record**

19. Amber Hancock of Distributel also provided two CDRs, for the RackNine toll free numbers 866-467-2259 and 877-841-3511. One CDR was for the 2 numbers together, and the second CDR detailed the telecommunications service provider for the phone numbers phoning into the 2 numbers. The initial CDR return provided this information for the dates April 11, 2011 through May 5, 2011, although the Production Order asked for data from March 26, 2011 through May 5, 2011. Ms. Hancock advised me on September 21, 2011 that records were only obtained from April 11 as Distributel kept only 6 months of call records in their database. She said that Distributel was continuing to search for "raw switch files" for additional records.
20. The CDR identified 605 calls made to one or the other of the numbers 866-467-2259 and 877-841-3511 in use by RackNine Inc. Of these, 61 calls were made to 866-467-2259, the general number for RackNine, and 544 calls were made to 877-841-3511, which rings to an automated message asking for a customer login number. As explained at paragraph 41 of my ITO of September 7, 2011 the use of the 877 number for customers indicates that persons calling that number had an existing customer relationship with RackNine.
21. On September 27, 2011 Amber Hancock of Distributel provided me with the second CDR for the numbers 866-467-2259 and 877-841-3511, based on what she called a "CDR switch log". This second Distributel CDR included calls from March 27, 2011 through May 5, 2011. Whereas the first CDR identified 605 calls, the second identified 864 calls. I have confirmed that the 259 additional calls all occurred between March 27 and April 10, 2011.

#### **Suspect Number 450-760-7746**

##### **The Bell Call Record**

22. At paragraphs 37 and 40 of the ITO of September 7, 2011 I said that the Bell CDR showed that phone number 450-760-7746 made 3 voice calls to the toll free number 866-467-2259 at 8:58, 9:02 and 9:20 p.m. on April 30. The Bell Canada CDR indicates that phone number 450-760-7746 was calling from Guelph.
23. As well, the Bell CDR showed that on May 1, 2011 phone number 450-760-7746 made 7 voice calls to toll free number 877-841-3511 at 11:16, 11:22, 11:26, 11:27, 11:28, 11:30 and 11:37 p.m. The Bell Canada CDR indicates that phone number 450-760-7746 was calling from Guelph.

##### **The Distributel Call Record**

24. The Distributel CDRs do not show any calls to either number 866-467-2259 or 877-841-3511 from 450-760-7746. Instead, the Distributel CDR shows the same 10 calls to the same RackNine Inc. numbers 866-467-2259 and 877-841-3511 as coming from 519-766-2000. The 519 area code includes the city of Guelph. I have compared the 519-766-2000 calls of the Distributel CDR against the Bell CDR record. The RackNine calls are recorded as Mountain Daylight Time, as confirmed to me on September 21, 2011 by Amber Hancock of Distributel. The calls are for virtually the same length of time, in seconds. I accept the differences of several seconds between

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the Bell and Distributel call records, as they are timing 2 different phones at the moment of their respective pickup and disconnection.

25. Represented as a chart, comparing the Bell and the Distributel records, one can see the relationship between the call records. The call time and call duration in seconds are as given in the respective CDRs.

Calls made to 866-467-2259 – April 30, 2011			
Bell CDR record 450-760-7746		Distributel CDR record 519-766-2000	
Eastern Daylight Time	Duration	Mountain Daylight Time	Duration
20:58	77	18:58	71.4
21:02	159	19:02	150.0
21:20	72	19:20	64.6

Calls made to 877-841-3511 – May 1, 2011			
Bell CDR record 450-760-7746		Distributel CDR record 519-766-2000	
Eastern Daylight Time	Duration	Mountain Daylight Time	Duration
23:16.	126	21:16	119.6
23:22.	200	21:23	191.8
23:26	17	21:26	8.4
23:27	45	21:27	38.5
23:28	126	21:28	117.5
23:30	130	21:30	122.2
23:37	82	21:37	76.6

26. The number 450-760-7746 from the Bell CDR does not appear anywhere in the Distributel CDRs, nor does the number 519-766-2000 from the Distributel CDRs appear anywhere in the Bell CDR. Distributel identified 519-766-2000 as a Bell Canada number. The RackNine Inc. number that is recorded as having received the calls is the same in each case, that is the Bell CDR and the Distributel CDR.
27. On September 14, 2011 I spoke with Denise Murley of Bell Corporate Security concerning the non-appearance of 519-766-2000 in the Bell CDR. On September 15 Murley emailed me that she believed 519-766-2000 was a long distance routing number, and not a valid phone number in itself. On September 20, 2011 I spoke with Denise Murley again. She said that Bell technicians had advised her that 519-766-2000 is a Bell number, associated to a trunk route. She described a trunk route number as being the way in which calls are routed to their destination, particularly to a toll free number. She provided the analogy of her calling long distance: her call may be routed through an intermediate number or trunk route, before going to its destination. This would allow the 'trunk' to carry many calls simultaneously to different recipient numbers. Thus 450-760-7746 could make the call to a toll free number, which the Bell CDR would recognize, but the recipient CDR may just recognize the trunk, or routing number as the calling number.
28. On September 20, 2011 I conducted a Google query of "trunk route" in telecommunications. At <http://en.wikipedia.org/wiki/Trunking> this is described as "a concept by which a communications system can provide network access to many clients sharing a set of lines or frequencies instead of providing them individually. This is analogous to the structure of a tree with one trunk and many branches."

#### Conclusion Based on paragraphs 16-28

29. Based on the material described above at paragraphs 16 through 28, I have concluded that it is reasonable to believe that the 10 calls noted above as being made to the RackNine numbers 866-467-2259 or 877-841-3511, which the Distributel CDR identifies as coming from 519-766-2000, in fact came from and are related to the 450-760-7746 phone number that was also the phone number

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appearing on the call display of the Guelph electors who received the misleading message of the moving poll location and which were identified as having been made to the RackNine Inc. numbers 866-467-2259 or 877-841-3511 in the Bell Canada CDR. I make this conclusion based on the identical times of the calls in the Distributel and Bell CDRs to the same RackNine Inc. numbers 866-467-2259 or 877-841-3511, once the effect of the time zone difference is taken into account, and the almost identical lengths of calls as set out above and the explanation of Denise Murley of Bell Canada security.

## New Grounds for Belief – Part 2

### Other Guelph Area Calls to RackNine Inc. 519/226 Area Codes

30. Area code 519 includes the city of Guelph. Area code 226 is an 'overlay' area code over 519, and includes Guelph as well. Both these facts can be determined through a review of a phone directory or by a Google search. In addition to the 10 suspect calls noted above, which Bell had reported as coming from Guelph, and which Distributel identified came from an area code which included Guelph, the Distributel CDRs also identified other calls made from Guelph area codes to RackNine Inc. at their 866-467-2259 or 877-841-3511 numbers during the period March 26 through May 5, 2011. Of these, 37 calls were from the 519 area code and 1 from the 226 area code.
31. Of the 37 calls, 30 calls were made by 3 phones, numbers 519-265-5392, 519-265-5396 and 519-265-5398, all of which were Rogers phones. On September 16, 2011 I called each number and each returned a 'not in service' recording. On September 19, 2011 James Ansell of Rogers Communications Law Enforcement Support advised me by email that the subscriber for each of these phones was "The Marty Burke Campaign". The contact person was given as Andrew Prescott of Guelph and the campaign address given as 965 York Road, Guelph, Ontario.
32. I have examined Elections Canada records filed by candidates in the 41<sup>st</sup> general election, which identify Marty Burke as the Conservative Party candidate in the Guelph electoral district in the 41<sup>st</sup> general election. Internet research I conducted on June 2, 2011 identified an online news article from "The Record" of Kitchener Waterloo. The article, dated April 10, 2011, identified Andrew Prescott as the Deputy Campaign Manager for the Burke campaign.
33. Of the remaining 7 Guelph calls to RackNine, as indicated on the Distributel CDR, 1 call came from 226-444-9005 on April 21, 2011. The call was to the RackNine 877-841-3511 customer log in number. I called 226-444-9005 on September 19, 2011 and got a voice recording welcoming me to the Guelph Conservative Party. Elections Canada records identify the Guelph Conservative Electoral District Association (EDA) as the registered association of the Conservative Party of Canada in the riding of Guelph. EDAs are the local manifestations of political parties at the district level, as set out at Part 18, Division 1.1 of the *Act*.
34. In summary, the 3 Burke campaign phone numbers, and the present Guelph Conservative Party phone number, called the 2 RackNine numbers 866-467-2259 and 877-841-3511 a total of 31 times between March 26 and May 5, 2011 and 29 of those calls went to the 877-841-3511 customer log in number. The following chart gives, by date, the RackNine number called and the call duration in minutes, seconds and tenths of a second, as follows:

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Date	#519-265-5392	#519-265-5396	#519-265-5398	#226-444-9005
March 30	1 to 877# 2:43.8	1 to 877# 17.6		
April 2	2 to 877# 07.0 2.25.2			
April 8			3 to 877# 1:12.6 06.3 1:17.4	
April 21	4 to 877# 06.1 39.1 79.9 150.4	1 to 877# 21.5	8 to 877# 05.6 06.3 04.8 30.3 04.7 148.2 13.7 06.5	1 to 877# 05.6
April 27		1 to 877# 41.3		
April 28	2 to 877# 77.8 129.9		1 to 877# 98.0	
May 2	1 to 877# 03.2 2 to 866# 60.2 53.7	3 to 877# 04.0 06.3 03.9		

35. From this data, and particularly the primary use of the RackNine Inc. customer log in number 877-841-3511, it seems that the Marty Burke Conservative Party campaign or some individual(s) associated to it were in some customer relationship with RackNine, during the 41<sup>st</sup> general election campaign period. See also paragraphs 47/49 below for 2 additional contacts from 519-265-5392 to RackNine Inc. and to the president of RackNine Inc. on Election Day, May 2, 2011.
36. I do not know the significance, if any, of the remaining 6 calls from 4 different Guelph area code numbers. Three (3) of the Guelph area numbers are subscribed to by 2 Guelph area businesses. The 4<sup>th</sup> number was out of service when I called it on September 19, 2011.

#### Other Calls to RackNine Inc.

37. I have also reviewed other Eastern Canada area code calls close to Guelph, on the Distributel CDR, on the assumption that the planner of the scheme of misleading phone calls to electors would most likely be close to the Guelph area. I have phoned the numbers that appear in the Distributel CDR. I describe the results below, by headings indicating the respective area codes called.

#### 613 Area Code

38. There were 40 calls in the Distributel CDR from 4 numbers using the 613 area code (Ottawa). Of these, phone number 613-288-7605, made 8 calls to 877-841-3511 or customer, RackNine number on April 30, and 613-755-2044 made 1 call to 877-841-3511 or customer number on May 1, 2011. On September 19, 2011 I called these numbers, which were answered by voice recordings for Rebecca Rogers of the Conservative Party and for Chris Rugé or Ruger of the Conservative Party respectively.

#### 289 Area Code

39. Area code 289 is an overlay area code for southwestern Ontario and areas near Toronto. There were 3 calls from 289-622-1555 to the general RackNine number 866-467-2259 on April 27, 2011, and was linked in the Distributel CDR as an 'originating number' for a 519 call. I called 289-622-1555 on September 19, 2011 which was answered by a voice recording for the constituency office of Conservative Member of Parliament Julian Fantino.

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40. Area code 902 applies to Nova Scotia and Prince Edward Island. There were 17 calls to the RackNine numbers 866-467-2259 and 877-841-3511 from 5 phone numbers in the 902 area code. Of these, 4 calls were made to the 877-841-3511 or customer number for RackNine on April 18, 2011 from 902-314-0310. On September 19, 2011 this number was answered by a voice mail for Olive Crane. Olive Crane is the provincial Progressive Conservative Party leader for Prince Edward Island. One (1) call was made to the 877-841-3511 or customer number for RackNine on April 18, 2011 from 902-368-4365, which on September 19, 2011 was answered as the "Opposition Members' Office" in Prince Edward Island. In April, 2011 the opposition in Prince Edward Island was the Prince Edward Island Progressive Conservative Party.
41. I also called other Eastern Canada numbers in the Distributel CDR. Many phones were no longer in service or did not have answering messages. I cannot presently tell if these numbers are significant.
42. To test this hypothesis further, on September 19, 2011 I called 6 Western Canadian numbers found in the Distributel CDR as having called the RackNine 877-841-3511 number. One (1) was out of service, 1 was answered by a personal voicemail, and 1 was answered by a Sheraton hotel in Vancouver. Of the remainder, 27 calls to RackNine were from 780-538-8413, which was answered by the constituency office of Chris Warkentin, Conservative M.P. for Peace River. Five (5) calls were from 403-769-0982, which was answered by the office of the Wildrose Party of Alberta, a political party in Alberta provincial politics. Finally, 9 calls were from 250-493-6144 on April 29, which was answered by the Okanagan-Coquihalla Conservative Party Association in British Columbia.

#### **Conclusion Based on paragraphs 30-42**

43. I conclude from the results above that RackNine Inc. likely acted as a Conservative Party Voice Broadcasting Vendor for a number of candidates' campaigns during the past election, based on the identification of numbers calling RackNine number 866-467-2259 and the customer log in number 877-841-3511 during the election campaign period which trace back to Conservative Party campaigns or to the Conservative Party from the 226, 289, 519, 613, 902 area codes. In particular I conclude that the Marty Burke Conservative Party campaign or some individual(s) associated to it were in some customer relationship with RackNine, during the 41<sup>st</sup> general election campaign period, based on the frequency of calls to RackNine Inc. from campaign phones and that 29 of the 31 campaign calls made to RackNine Inc. went to the customer log in phone number 877-841-3511. Using a voice broadcasting service during an election period is not prohibited under the *Canada Elections Act* and is frequently pursued by parties and candidates to make automated telephone calls to voters

#### **New Grounds for Belief – Part 3**

##### **The Candidate's Electoral Campaign Return**

44. Subsection 451 of the *Canada Elections Act* requires that within 4 months following an election the Official Agent of a candidate shall provide the CEO with a Candidate's Electoral Campaign Return detailing the financing and expenses for the candidate's electoral campaign. A Return must include a "statement of election expenses", which is found at part 3a of the Return, and be accompanied by submission of supporting documents, such as invoices. The Candidate Returns are posted on the Elections Canada website. The Returns and supporting documents are accessible to the public.
45. I have examined the Return submitted by Abdul-Qayum Ali, the Official Agent for the Marty Burke campaign, as found on the Elections Canada public website. Part 3a of the Burke Return lists campaign expenses of \$87,361.60, but does not list RackNine as an expense. The Return does list 2 other, Ontario based, service providers whose business includes voice broadcasting services and other telephone work; Campaign Research at \$6,215.00 and RMG (Responsive Marketing Group) at \$15,000.00. I have also examined the supporting documents submitted in respect of the Return on November 7, 2011. No invoice or other record was sent relating to RackNine Inc.

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46. Many of the witnesses identified in my ITO of June 8, 2011 as Guelph electors spoke of having received repeated campaign and voter survey calls from the Burke campaign, and, to a lesser extent, from other campaigns. This is consistent with the expenses reported immediately above relating to RMB and Campaign Research. On November 7, 2011 I examined their invoices to the campaign, which identify their charges as relating to direct voter contact, phone surveys and Get Out The Vote (GOTV) activities, all of which were accomplished by telephone.
47. Included in the Conservative candidate's supporting documents were 2 Rogers's invoices, with invoice dates of April 9 and May 9, 2011 respectively. The invoices were for cable, internet and phone services for the campaign. Each invoice included charges for the 3 campaign phones 519-265-5392, 519-265-5396 and 519-265-5398 noted above at paragraphs 31-35. I examined these invoices on November 7, 2011. The invoice dated May 9, 2011 included long distance charges for each of the 3 phones for outgoing calls that incurred calling charges. The invoice portion for Burke campaign phone 519-265-5392 identified 2 calls to Edmonton from Guelph on May 2, Election Day. The first call was to 780-643-2459, with duration of 30 seconds. The second call was to 780-668-8400 at 19:11 hours for a call lasting 2 minutes 37 seconds.
48. The call to 780-643-2459 was made at 11:08 hours on May 2, 2011. On November 14, 2011 I called 780-643-2449 and reached a recorded message welcoming me to RackNine Inc. The recorded message was an identical welcome message to the one heard when I phoned the RackNine toll free number 866-467-2259 on August 23 and again on November 14, 2011. It seems to me that number 780-643-2449 was an Edmonton area number for local callers to use as an alternative to the toll free 866-467-2259 number.
49. On August 26 and again on October 21, 2011 I queried Facebook pages associated to RackNine Inc. and to Matt Meier, RackNine's CEO. On both occasions I located a Facebook page for Matt Meier which includes an entry identifying 780-668-8400 as his phone number. In other words the user of the Burke campaign phone number 519-265-5392 on May 2, 2011 contacted the CEO of RackNine in the evening of Election Day, prior to the poll closing time in Guelph. The calls noted in paragraphs 48 and 49 were in addition to the 3 other calls placed from the same phone number to RackNine numbers 866-467-2259 and 877-841-3511 the same day.

#### **Conclusion Based on paragraphs 31-35 and 44-49**

50. I believe it is reasonable to conclude based, on the telephone traffic described in paragraphs 31-35 and 44-49, that the Marty Burke campaign or certain campaign workers had a customer relationship with RackNine Inc., which included knowledge of a phone number associated to RackNine's CEO, Matt Meier. I also believe that it is reasonable to conclude that the absence of an expense report at part 3a of the Burke campaign Return is inconsistent with the pattern of 3 different Conservative campaign telephones in Guelph and one Guelph Conservative Party phone calling RackNine Inc. 31 times, during the midst of the general election, 29 of which calls were directed to a customer log in number. These 31 calls are in addition to the 2 May 2 calls discussed at paragraphs 48/49, which bring the total calls to RackNine Inc. from Burke campaign phones, during the general election campaign period, to 33. I believe that the individual(s) behind the misleading calls which are the subject of this investigation would not want a local campaign to be identified with the calls, as they amount to improper activity, and consequently I believe that any expense would likely be omitted from a campaign Return.

#### **New Grounds for Belief – Part 4**

##### **Brent Pedersen**

51. Brent Pedersen is a Guelph resident who received a call by voice mail at his home number claiming that his polling station had been moved. Pedersen had complained of this to Elections Canada by email on May 11, 2011, but his complaint was not brought to my attention until he sent a follow up email on October 5, 2011. I interviewed Mr. Pedersen October 24, 2011. His account of the call was consistent with those described in my ITO of June 8, 2011. In Pedersen's case he recalled the recorded voice as male. He recorded the calling number at the time as 450-760-7746, based on his call display. Pedersen knew the call to be misleading at the time he heard it on his voice mail at

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supper time, as his voice mail also included calls from both the Conservative and Liberal campaigns reporting such calls as misleading. He also became aware of media reports of misleading calls.

52. Mr. Pedersen told me he is employed as a senior support advisor with Aria Solutions, a company that services telephone call centers. Mr. Pedersen has 14 years technical experience in the call centre environment, primarily with in bound call routing, system testing and system trouble shooting. Pedersen's experience includes large company telephone call systems, including those of the Royal Bank, Sun Life and the Insurance Corporation of British Columbia. In addition he has worked with vendors of automated dialing systems and has himself developed an automated dialing outbound call system which he has used for testing of his clients' inbound call systems. His employment requires him to have extensive knowledge of telephony (telephones, telephone switches and telephone connections), and of call centers and automated dialing.
53. Mr. Pedersen told me that a Voice Broadcasting Vendor (VBV) could operate in several ways, but that almost all of the newer and smaller VBVs use VoIP (Voice over internet Protocol) phoning, as the equipment needed is much smaller and cheaper than with older calling systems.
54. Mr. Pedersen explained that telephone calls travel from a phone, through a "portal" then over the PSTN or "Public Switch Telephone Network" to the recipient number. A simple "portal" is a home telephone jack which connects a home phone to the PSTN. The PSTN is the network operated by telephone carriers, such as Bell, that carries telephone voice messages to their destination.
55. Mr. Pedersen explained that VoIP calling from a VBV would require the vendor to use SIP (Session Initiated Protocol) computer servers, which allow the application software on a computer that generates telephone calls, to communicate with a "Voice Gateway". The "Voice Gateway" acts as a "portal" and translates the data, for example a digitally recorded voice message, from a VoIP protocol to a PSTN protocol so as to allow the message to travel over the PSTN network. In other words the "Voice Gateway" allows the VoIP call to travel over the PSTN, which it would not otherwise be able to do.
56. Pedersen said that within a Voice Broadcasting Vendor or VBV operation a call would be initiated by application software which would instruct the "Voice Gateway" to ask the PSTN carrier to send a call to a recipient telephone number, with a signal coming back to the application on the call going through to the recipient number. The signal back would prompt the sending of a recorded voice message. All this would happen in a fraction of a second and the recipient would simply perceive this to be little different than a normal phone call.
57. Mr. Pedersen explained that at the VBV end, the calls would move through T1 cables into the Voice Gateway. T1 cables are telecommunications industry standard cables for large scale access to the PSTN and are used in telephone call centers. Each T1 cable can carry 23 voice channels and 1 data channel. Mr. Pedersen used the example of 4 T1 cables being able to carry 92 simultaneous voice calls to 92 separate numbers. Each data channel would retain data related to its respective 23 voice channels. The data retained would include the ANI or "Automatic Number Identifier" and the DNIS or "Dialed Number Identification Service", giving the ability to generate Call Detail Records (CDRs) showing, respectively, the calling and the called telephone numbers as well as the time and date of calls. The ANI is also the number which is displayed on a call recipient's call display.
58. Mr. Pedersen noted that it is possible for VBVs to change the ANI data in the data channel, so that the calls appear on their recipients' call displays as coming from a different telephone number than the number actually used by the VBV. This is also known as call spoofing.
59. Mr. Pedersen noted that the voice message to be sent out by a VBV could be uploaded to a client to the VBV by internet, and the list of telephone numbers to be called could be provided by the client by means of any electronic spreadsheet or other list which could be provided via the internet or email. The application software would simply go through the phone numbers list, sending phone numbers to the "Voice Gateway" and on to the PSTN. He noted that the client billing could be an automated process as well, leaving "zero human interaction".
60. Mr. Pedersen said that a VBV has the ability to create CDRs of their calls from data retained on their servers, and in fact would rely on that data for billing purposes and dispute resolution. It would be

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possible that the data from which a CDR would be created might be purged from time to time, but he thought that at least a summary of the work would likely to be generated and retained by the VBV.

### **RackNine Customer Records**

61. On September 8, 2011 I spoke with Simon Rowland concerning the nature of records a VBV might reasonably be expected to retain. In the ITO of June 8, 2011, at paragraphs 107-112, I identified and relied upon Rowland as a subject matter expert in the area of call center systems, telemessaging and telecom product development and network engineering. As well, he is the CEO of Direct Leap Technologies, which provided telephone services to the NDP in the 2011 general election.
62. Rowland noted the common use of VoIP calling by VBVs, which type of calling is included in the RackNine Inc. list of services described on their Google homepage. Rowland said that based on his experience in the same business, VoIP calling would mean RackNine should have a web interface log, customer names, user names and passwords, customer IP addresses, business, billing and payment records, lists of phone numbers associated with the user account, including call lists, possibly recordings of audio messages related to the account, emails to and from customers, and should be able to provide call detail records associated to a calling initiative. Rowland said that much of this material would likely be retained electronically, on RackNine computers or computer servers, but some could exist in paper format. He noted that much of the customer interaction with RackNine would be electronic, by internet uploads or by phone messaging, and that a VBV would not need many employees to carry out its role, almost all of it is carried out through computerized functions.

### **Location of RackNine Inc.**

63. My ITO of September 7, 2011 at paragraph 39 had stated that RackNine Inc. was located at 8170 - 50th Street NW, Edmonton, AB T6B 1E6. I have since learned, via a Google search of the RackNine website I conducted October 20, 2011, that RackNine is now located at #5, 9353 50<sup>th</sup> Street NW, Edmonton, AB, T6B 2L5. A related Facebook search I also conducted on October 20, showed an entry of September 26, signed by Matt Meier, indicating RackNine had moved to #5, 9353 50<sup>th</sup> Street. As indicated in the ITO of September 8, 2011 internet searches and company records accessed for that ITO identified Matt Meier as the President and CEO of RackNine.

### **CONCLUSION AND REQUEST**

64. Based on the facts identified above in my grounds for belief I think it is reasonable to believe that some sort of customer relationship existed between the Marty Burke Conservative campaign in Guelph for the 41<sup>st</sup> general election and RackNine Inc., or between certain Burke campaign workers and RackNine Inc.; that this relationship was related to the general election campaign in Guelph; and that the relationship related to the misleading calls made to Guelph area electors which they perceived as coming from phone number 450-760-7746. My belief is based on:
  - (a) The record of phone calls being made from each of the 3 Burke campaign phones 519-265-5392, 519-265-5396 and 519-265-5398 to RackNine Inc. phone numbers 866-467-2259 and 877-841-3511 between March 30 and May 2, 2011, and primarily to the RackNine Inc. customer log in phone 877-841-3511, which number requires a customer status to log in.
  - (b) The final call from Burke campaign phone 519-265-5392 was made to the direct number of RackNine's CEO on the evening of Election Day.
  - (c) The time period in which these Burke campaign calls were made includes the April 30 and May 1 period during which phone number 450-760-7746 was activated by a person calling himself Pierre Poutine, and was in contact with RackNine Inc., including 7 calls to the RackNine Inc. customer log in phone 877-841-3511, which action was followed within hours by misleading calls being made to Guelph electors on May 2, as if coming from 450-760-7746.
  - (d) RackNine Inc. is in the business of making multiple recorded VoIP calls on behalf of clients, as evidenced by their website description of their services and by the maintenance

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of a Do Not Call List, referred to in their recorded phone greeting. Based on the accounts of Simon Rowland and Brent Pedersen, a company such as RackNine Inc. was capable of making the misleading calls and identifying 450-760-7746 as the calling number, and that RackNine Inc. would retain business records relating to these calls.

- (e) The misleading calls made to Guelph area electors, had the effect of preventing or attempting to prevent electors from voting at their assigned polling stations and instead attending at a polling station at which they could not vote. The benefit of this on May 2, 2011 could only accrue to a general election campaign conducted in the electoral district of Guelph, of which the Marty Burke campaign was one such campaign.

65. Based on the information described above including that found within the ITOs of June 8 and September 7, 2011 attached to this Information as Exhibits "A" & "B", I have reasonable grounds to believe and do believe that:

- i. The offences described above have been committed;
- ii. the documents or data sought will afford evidence respecting the commission of these offences, particularly that they will assist in identifying the source of the message sent to Guelph electors by telephone, appearing to come from 450-760-7746, and the identity of the person or persons who ultimately put the scheme in motion through the Vendor;
- iii. RackNine Inc. has possession or control of the documents or data sought.

66. In order to ensure sufficient time for locating and certifying the documents sought, I request that the time period to produce the DOCUMENTS OR DATA TO BE PRODUCED be 30 days from the date of the service of the Production Order being applied for.

67. I request that the documents or data be produced to Allan Mathews, a public officer, and forwarded by registered mail to the attention of Allan Mathews at the Office of the Commissioner of Canada Elections, whose mailing address is 257 Slater Street Ottawa, Ontario K1A 0M6 by no later than 30 days from the date of the service of the order applied for.

68. I request the documents or data be produced be in hardcopy form.

WHEREFORE THE INFORMANT prays that a Production Order may be granted according to the terms herein proposed ordering the Documents or Data to be Produced to obtain information concerning the alleged offences.

Sworn before me this 22<sup>nd</sup> day of November  
A.D. 2011 at Edmonton, Alberta

*Joyce L. Lester*

(Justice in and for the Province of Alberta)

**JOYCE L. LESTER**  
Justice of the Peace

*Allan Mathews*

(Signature of Informant)

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EXHIBIT "A"

INFORMATION TO OBTAIN A PRODUCTION ORDER  
SWORN JUNE 8, 2011

THIS IS EXHIBIT "A"  
referred to in the writ of  
Allan Mathews.  
S. A. D. 22<sup>nd</sup>  
DAY OF NOVEMBER, 2011  
Justice of the Peace

JOYCE L. LESTER  
Justice of the Peace

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**INFORMATION TO OBTAIN A  
PRODUCTION ORDER**  
(Section 487.012 of the Criminal Code)

Canada,  
Province of Ontario

This is the information of Allan Mathews, hereinafter called the **Informant**, of the City of Ottawa, in the Province of Ontario, a public officer appointed or designated to administer or enforce a federal law and whose duties include the enforcement of the *Canada Elections Act*, taken before me.

The Informant says that he has reasonable grounds to believe and does believe that the following offence has been committed, namely:

**OFFENCE**

That a person or persons unknown, on May 2, 2011, at or near the City of Guelph and elsewhere in the Province of Ontario, did, wilfully prevent or endeavour to prevent an elector from voting in an election contrary to paragraph 281 (g) of the *Canada Elections Act*.

And by so doing committed an offence contrary to paragraph 491 (3)(d) of the *Canada Elections Act*, S.C. 2000, c.9 as amended;

AND

That a person or persons unknown, on May 2, 2011, at or near the City of Guelph and elsewhere in the Province of Ontario, did, by pretence or contrivance, induce or attempt to induce persons to vote or refrain from voting or to vote or refrain from voting for a particular candidate and by so doing committed an offence, contrary to paragraph 482 (b) of the *Canada Elections Act*, S.C. 2000, c.9 as amended;

And that the following documents or data will afford evidence respecting the commission of the offence described above:

**DOCUMENTS OR DATA TO BE  
PRODUCED**

Copies, certified by affidavit to be true copies, of documentation or data relating to a Virgin Mobile cell phone, using phone number 450-760-7746, located at or through Bell Canada, 865 Pharmacy Avenue, Toronto, Ontario M1L 3K7 as follows:

- Sales records for the sale of a Virgin Mobile cell phone and phone number 450-760-7746 that is associated to the Virgin Mobile cell phone, believed to be recorded in Bell Canada records under a subscriber name "Pierre Poutine", including records relating to the method and time and place of payment and purchase;
- In the event sales records for the sale of Virgin Mobile cell phone, and phone number 450-760-7746 that is associated to the Virgin Mobile cell phone are not available at Bell Canada, then the name and record of sale or transfer to the sales retailer through whom Virgin Mobile cell phone and phone number 450-760-7746 was made available for sale to the public;
- All subscriber information for Virgin Mobile cell phone, phone number 450-760-7746 believed to be under a subscriber name "Pierre Poutine", including but not limited to all records associated to phone time purchased and assigned to Virgin Mobile cell phone, phone number 450-760-7746, and to phone number 450-760-7746 going into and out of service;

**DÉNONCIATION EN VUE D'OBTENIR  
UNE ORDONNANCE DE COMMUNICATION**  
(article 487.012 du Code criminel)

Canada,  
Province De L'Ontario

Les présentes constituent la dénonciation de (le dénonciateur), de (ville), dans ladite province de/du (province), \_\_\_\_\_, ci-après appelé le dénonciateur, portée devant moi.

Le dénonciateur déclare qu'il a des motifs raisonnables de croire que les infractions suivantes ont été commises, à savoir:

**INFRACTION**

Et que les documents ou données décrits ci-dessous fourniront une preuve touchant la perpétration des infractions énumérées ci-haut :

**DOCUMENTS OU DONNÉES À  
COMMUNIQUER**

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June 8th/11

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- Call Detail Records for phone number 450-760-7746 from the period from its going into service to its going out of service, which is believed to be from March or April, 2011 through to and including May, 2011, including records relating to call origination and termination, call duration, originating carrier, call and carrier routing information, phone numbers called, phone numbers of calls received, and caller ID information, and the Automatic Number Identifier (ANI) associated to the calls made;
- In addition to the above, Call Detail Records for phone number 450-760-7746 segregated for May 2, 2011, including records relating to call origination and termination, call duration, originating carrier, call and carrier routing information, phone numbers called, phone numbers of calls received, and caller ID information, and the Automatic Number Identifier (ANI) associated to the calls made;
- Information related to the SIM (Subscriber Identity Module) chip associated to the Virgin Mobile cell phone using phone number 450-760-7746, including any information as to whether the chip was installed in any equipment other than the Virgin Mobile cell phone, phone number 450-760-7746 after purchase, including a list of devices, if any, that have been used in that subscriber's account.

however stored (electronically, on microfiche, on paper, on photographic film or any other form), maintained at Bell Canada and affiliates;

#### GROUND FOR BELIEF

#### MOTIFS DE CROIRE

The Informant says that he has reasonable grounds to believe and does believe the matters described above, and that his grounds are based on the following:

#### OVERVIEW

1. I, Allan Mathews, the Informant herein, am an Investigator in the Office of the Commissioner of Canada Elections (the "Commissioner") and a person charged by the Commissioner with duties relating to the administration and enforcement of the *Canada Elections Act* (the *Act*). Pursuant to subsection 511(3) of the *Canada Elections Act* (the *Act*), for the purposes of the Criminal Code, I am a Public Officer as defined by section 3 of the *Interpretation Act*. I have personal knowledge of the matters and facts contained herein except where stated to be on information or belief and where so stated I verily believe them to be true.
2. I have been investigating allegations that, in relation to the 41<sup>st</sup> general federal election campaign, in the electoral district of Guelph, bogus telephone calls apparently made from telephone number (450) 760-7746, were made to certain electors on Election Day, May 2, 2011. These calls consisted of a recorded bilingual message which falsely claimed to be from Elections Canada. The calls falsely reported that due to high voter turnout, the elector's voting location had been moved for these individual electors to another location, at Old Quebec Street Mall, 55 Wyndham Street North, Guelph. There was no truth to this call. The caller was not representing Elections Canada and no voting location had been moved. The electors called could not vote at the location named in the call. By this pretence or contrivance the conduct induced or attempted to induce electors to vote or not to vote, or to vote or not to vote for a particular candidate, contrary to paragraph 482 (b) of the *Act*. Similarly the conduct wilfully sought to prevent or endeavoured to prevent electors from voting in the election being carried out on May 2, 2011, contrary to paragraph 491 (3)(d) of the *Act*.
3. I am swearing this Information in support of a request for a production order to obtain Bell Canada subscriber information and Call Detail Records, including call origination and termination data pertaining to phone number (450) 760-7746, and for sales transactions records relating to a Virgin Mobile cell phone and phone number (450) 760-7746. The Bell Canada records named in the DOCUMENTS OR DATA TO BE PRODUCED above, will assist in determining that this phone number was used to call a number of electors in Guelph Electoral District, by confirming these calls were made to the electors in question on May 2, 2011, and assist in locating other electors to whom

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such calls were made that are presently unknown to me. The records of other calls made to and from this phone number, within the election period of March 26 through May 2, 2011 may also assist in locating the subscriber of the telephone number, currently known to Bell Canada only as "Pierre Poutine".

4. I believe that the offences described above has been committed by a person or persons unknown; that the records to be produced will provide evidence of these offences; and that the records are in the possession or control of Bell Canada, Toronto, Ontario (Bell). This Information sets out the grounds for my belief in these matters. An element of the proof of the alleged offences requires evidence of telephone calls made to electors and of telephone subscriber information or information that would tend to demonstrate who the subscriber or user or purchaser of the phone and the phone number might be. The documents or data and their relationship to offences under the *Act* are set out in this Information.
5. The person to whom this production order is addressed is not a person who has committed or is suspected of having committed the offences set out under the heading OFFENCES above; or any other offences against any act of parliament. This person is not subject of this investigation and is reasonably believed to have possession or control of the material named in the DOCUMENTS OR DATA TO BE PRODUCED.

### THE CANADA ELECTIONS ACT

6. A Chief Electoral Officer (CEO) is appointed by resolution of the House of Commons and is responsible for the administration of elections, referendums and other aspects of Canada's electoral system as set out in the *Canada Elections Act (Act)*.
7. The CEO appoints a Commissioner of Canada Elections under section 509. The duty of the Commissioner is to ensure that the *Act* is complied with and enforced. The Commissioner's powers include the power under section 511 to refer a matter to the Director of Public Prosecutions and under section 517 to conclude a compliance agreement.
8. The essence of the federal election system is to ensure that all Canadians have a fair and equitable chance to be heard and elected, in part through rules relating to conduct of political entities and individuals in respect of electors. A basic element of these provisions is that electors are free to vote without interference from others in the nature of intimidation, duress, compulsion or by means of pretence or contrivance. The right to vote is also a constitutional right found at section 3 of the *Charter of Rights and Freedoms*:

*Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.*

### Offences

9. Paragraph 281 (g) of the *Act* states that:

*No person shall, inside or outside Canada,*

*(g) wilfully prevent or endeavour to prevent an elector from voting at an election*

10. Subsection 491 (2) set out that a contravention of paragraph 281(g) is an offence. Subsection 500 (1) set out the punishment for contraventions of 491 (2) offences.

11. Paragraph 482 (b) of the *Act* states that:

*Every person is guilty of an offence who*

*(b) by any pretence or contrivance, including by representing that the ballot or the manner of voting at an election is not secret, induces a person to vote or refrain from voting or to vote or refrain from voting for a particular candidate at an election.*

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12. Subsection 500 (5) set out the punishment for contraventions of 482 (b) offences.

### BACKGROUND AND SYNOPSIS OF INVESTIGATION

13. This investigation was initiated by the Commissioner on May 12, 2011 as a result of a number of complaints made on and after May 2, 2011 by electors to the Chief Electoral Officer or directly to the Office of the Commissioner. May 2, 2011 was Election Day for the 41<sup>st</sup> federal general election.
14. To date we have received complaints that are consistent in almost every respect. The complaints from individual electors describe receiving a telephone call at or around 10:00 hours on the morning of May 2, 2011. The caller was usually described as a recorded female voice giving a bilingual message. The caller said she was calling on behalf of Elections Canada. The gist of the message was that due to a projected increase in poll turnout, the elector's voting location had been changed. The new voting location given to the recipients of the calls was at the Old Quebec Street Mall at 55 Wyndham Street North, Guelph. The caller gave a number to call, which a number of recipients of the calls noted as 1-800-434-4456, if the elector had any questions. The message was then repeated in French by a different female voice. Almost all recipients of the calls who noted their call display function said the calling number given was 450-760-7746. The only detail on which witnesses differ is whether the recorded voices were male or female.
15. Several witnesses have provided a copy of the message as recorded on voicemail. These will be described further below. The English message received by electors is as follows:
- This is an automated message from Elections Canada. Due to a projected increase in poll turnout your voting location has been changed. Your new voting location is at the Old Quebec Street mall at 55 Wyndham Street North. Once again, your new poll location is at the Old Quebec Street Mall at 55 Wyndham Street North. If you have any questions please call our hotline at 1-800-434-4456. We apologize for any inconvenience that this may cause.*
16. In fact the calls were not from Elections Canada, but rather from a recorded voice which falsely claimed to be calling on behalf of Elections Canada. No voting location (polling site or polling station) had been moved in Guelph for any reason. Each electors called with the bogus message could only vote at the polling station which had been assigned to them. Polling stations are assigned to electors based on their address on a Voters' List compiled by Elections Canada. These polling stations were identified on a Voter's information Card (VIC) mailed to electors earlier in the election period. Elections Canada did not phone individual electors and does not have phone numbers for electors. See below at paragraph 96/99 for an explanation of the electors list process and the assignment of electors to polling stations within polling sites and the absence of phone calls from Elections Canada.
17. Between May 2 and May 13, 2011 the Office of the Commissioner received a number of complaints from individual electors concerning the May 2, 2011 phone calls. In addition, one complaint was received on behalf of 7 individual unnamed electors by a representative of the Green Party Electoral District Association (EDA) and there was one anonymous complainant.
18. On May 31, 2011 I received a list of 79 named electors who had reported receiving bogus calls to the Liberal campaign office in Guelph on May 2, 2011. Of these 2 names were also in the number of individual electors who complained to Elections Canada and whom I had contacted earlier in the month of May. This list was provided to me at my request from the office of Frank Valeriot, the Liberal Party candidate elected on May 2.
19. An additional complainant in Peterborough, Ontario received the same call, from the same calling number, telling her of a move of her polling station to Old Quebec Street Mall at 55 Wyndham Street North, Guelph.
20. Two (2) additional complainants in Windsor, Ontario received calls, from the same calling number, moving their polling station to another location in Windsor.

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